

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN RE THE MATTER OF ELECTRONIC)
FILING AND SERVICE OF PLEADINGS)
IN COMPLEX CIVIL LITIGATION CASES)
_____)

ADMINISTRATIVE ORDER
NO. 2003-115

As permitted by Rule 124 of the Rules of the Supreme Court of Arizona and Supreme Court Administrative Order No 2002-107 which permits the Superior Court to establish additional rules for the Complex Civil Litigation Court, any civil case designated by the Civil Department Presiding Judge of this Court or his/her designee as a complex civil case and assigned to the complex civil litigation court shall be governed by this Administrative Order.

IT IS THEREFORE ORDERED:

1. Application of Administrative Order

All participants in designated complex cases shall use the electronic filing and service system created by the contract executed on September 9, 2003 between LexisNexis CourtLink and the Superior Court in Maricopa County. Except as otherwise provided in this Order, all parties to any complex case so designated by this court shall be bound by the provisions of this Administrative Order and shall enter into an e-file subscriber agreement with LexisNexis File and Serve or the then current E-Filing Vendor approved by this court. The commencement date for the electronic filing and service system shall be December 8, 2003.

2. Definitions of Terms

The following terms are defined as follows with regard to this Administrative Order:

- E-file: electronic transmission of an original document to the Court, and from the court, for the purposes of filing.
- E-service: electronic transmission of a copy of the document to all other designated recipients via the E-Filing Vendor's system. E-service does not include service of process or summons to gain jurisdiction over persons or property.
- Participant: a self-represented litigant or their attorney using the e-file system.
- Public access terminal: computer located in the Superior Court Clerk's office through which the public may research and print electronically filed documents. Public access terminals will not be used for filing. Parties who

do not have access to a computer may bring their electronic documents for filing on diskette or CD-Rom to the Civil filing counter where staff will assist them.

- Document management system: the document storage and imaging system maintained by the Clerk of Superior Court to store electronic court documents.
- Case management system: the system in use by the Clerk and the Court to docket, calendar, assign, and track cases.
- E-Filing Vendor: a private firm or other business entity authorized by the Court to provide electronic filing and service services.
- PDF: a file format created by Adobe Acrobat that preserves all fonts, formatting, colors, and graphics of any source document, regardless of the application platform used.
- TIFF: a standardized file format used to store imaged documents.
- Scanned document: an electronic image created by scanning a paper document.
- Filing: the documents submitted to the Court for filing with possibly one or more supporting documents attached.
- Hyperlink: an electronic connection or reference to another place in the document, such that when selected the user is taken to the portion of the document to which the hyperlink refers.
- E-service list: the list of e-mail addresses registered by counsel of record in the e-filing case.
- Conventionally, in the conventional manner: filing or service of paper documents.

3. Electronic Filing of Pleadings and Other Documents

As of the commencement date of this Administrative Order, except as expressly provided herein, all pleadings, motions, memoranda of law, orders, or other documents filed in a case designated by the Civil Department Presiding Judge or his/her designee as a complex civil litigation case, other than the initiating complaint, shall be filed and served electronically through the e-file system maintained by the E-Filing Vendor selected by the Court. Except as provided herein or as ordered by a judge, the Clerk shall not accept or file any pleadings or instruments in the conventional manner from a party in an e-file case.

4. Intervenor, Counterclaimants, Cross-Defendants, Third Parties, Joined Parties

Intervenors are required to file electronically, serve documents electronically and receive service electronically.

5. Complex Case Fee

A complex civil litigation court case fee of \$500.00 has been established and will be assessed pursuant to Superior Court Administrative Order 2002-127, filed on December 20, 2002 and approved by the Maricopa County Board of Supervisors.

6. Lodging Documents

Documents to be lodged with the Court and proposed orders will be transmitted electronically to the Court and other parties via the E-Filing Vendor system.

7. Documents not Permitted to be Filed Electronically

Notwithstanding the foregoing, the following types of documents shall be filed conventionally, unless expressly required to be filed electronically by the Court:

- Initial complaint and summons and will always precede a certificate designating case complex;
- First paper by each defendant unless the case has been designated complex or otherwise permitted by the Court;
- The Motion for Complex Certification and Certification of Complexity;
- Documents filed under seal (A motion to file documents under seal, however, shall be filed and served electronically.)
- Audiotapes not expressly authorized by the Court for filing electronically.
- Affidavits of service for conventionally served or filed documents.
- Applications and orders for deferral or waiver of court fees and/or costs.

Plaintiff shall file a complaint and serve a summons on each defendant in the conventional manner. The Clerk shall issue the summons in the conventional manner and the original paper summons must be returned for filing. Each defendant shall make his/her first appearance in the conventional manner, unless the case has been designated complex or otherwise permitted by the Court. Cases meeting the criteria for complex civil litigation status will be designated as e-file cases by the Civil Department Presiding Judge or his/her designee either: 1) upon review and approval of a motion submitted by the parties; or, 2) upon review and approval of a request by the judge assigned to the case.

Exhibits and appendices to pleadings shall be filed and served electronically. However, courtroom exhibits are governed by the Court's e-exhibit policy and

shall be handled in the conventional manner. Courtroom exhibits shall not be filed with the Court through the E-Filing Vendor.

8. Original Documents/Official Court File

The original records of the case, including the docket, case documents, judgments and orders of the Court, and any other documents in the legal file, will be kept in electronic form in lieu of any paper records in cases where the Court has authorized electronic filing. Any documents required to be filed in the conventional manner pursuant to Section 7 of this order which are not subsequently imaged by the Clerk shall be retained in their original format by the Clerk as an original record of the case. An electronically filed document constitutes the filing of the original document under the rules governing practice and procedure in the courts of this state. The electronically filed document as it resides on the Clerk's electronic document management system shall be considered the original document satisfying the best evidence rule set forth in Rule 1002, Arizona Rules of Evidence.

9. Format of Electronic Documents

All electronically filed documents shall be formatted in accordance with the applicable rules governing formatting of paper documents, and in conformance with such other formats as the Court may require from time to time. The provisions of Arizona Supreme Court Rule 124 (f) Paragraph Numbering will not be applied to electronic documents filed pursuant to this administrative order.

In an e-file case, an e-mail address of the counsel of record shall also be included on each electronically filed document.

10. User ID and Password

Upon receipt by the E-Filing Vendor of a properly executed e-file Subscriber Agreement, the E-Filing Vendor shall assign the self-represented litigant or the litigant's counsel of record a user name and password, which may thereafter be used by such self-represented litigant or counsel of record to obtain access to the e-file system. A litigant may access the system for purposes of document filing only in the event that the litigant is acting as his/her own attorney, and no litigant who is represented by counsel may personally file documents via the e-file system.

The attorney of record or self-represented litigant may file, serve, receive, review, print and retrieve electronically filed pleadings, orders, and other documents filed in the designated e-file case according to the terms of the Subscriber Agreement and this Administrative Order.

No attorney or self-represented litigant shall knowingly authorize or permit his/her user ID and password to be utilized by anyone else.

11. Signature

A user ID and password issued by the E-Filing Vendor for the purpose of filing documents electronically with the Court shall constitute a signature of the registrant of a password on the documents submitted to the Court or by the Court.

Documents containing signatures of third-parties (i.e., unopposed motions, affidavits, stipulations, etc.) may also be filed electronically by indicating the original signatures are maintained by the filing party in paper-format.

12. Hyperlinks, Bookmarks and Other Electronic Navigational Aids.

Electronically filed documents may include hyperlinks, bookmarks and other electronic navigational aids for the convenience of the judge assigned to the case. A hyperlink is not itself a part of the filed document. Each hyperlink must contain a text reference to the target of the link.

The foregoing notwithstanding, hyperlinks are not part of the official court record and will not be preserved in electronically filed documents submitted by the E-Filing Vendor for storage on the Clerk's electronic document management system.

Note: When a litigant files a document using Lexis/Nexis, Lexis/Nexis will convert the document to portable document format (PDF). When a document is converted to PDF, hyperlinks are automatically disabled. The PDF document will be filed with the Clerk's office, and the litigant's document containing the hyperlinks will be delivered to the judge's electronic in-box.

13. Printing of Electronically Filed Documents

Any electronically filed document must be able to be printed with the same contents and formats as if printed from its authoring program.

14. Original Documents to be Maintained

Notwithstanding any other rules of court, a party who files any document electronically with the Clerk shall not submit a courtesy paper copy of the document to the Court, unless ordered by the Court to do so due to exceptional circumstances.

If the statute requires a pleading or affidavit to be sworn to, then the original signed affidavit or pleading must be maintained by the attorney or self-

represented litigant and produced in its original form within five (5) days at the demand of another party or the Court.

15. Certified Copies

Certified copies of electronically filed documents may not be obtained electronically. Certified copies will be issued in the conventional manner by the Clerk of the Court.

16. Approved E-Filing Vendor

The approved E-Filing Vendor for the Court is LexisNexis File and Serve. LexisNexis File and Serve may be contacted at 1-888-529-7587 or through their web site at www.lexisnexis.com/fileandserve. The approved E-Filing Vendor is hereby appointed to be the agent of the Clerk of Superior Court as to electronic filing, receipt, service, and/or retrieval of any pleading or documents via the E-Filing Vendor system.

The Superior Court and Clerk of Superior Court may, from time to time, solicit bids from other potential E-Filing Vendors and submit to the Presiding Judge any recommendations for change in the designation of the E-Filing Vendor or the terms of the Subscriber Agreement.

17. Subscriber Agreement

When a case has been designated a complex civil litigation case, each participant shall promptly take the steps necessary to enable counsel or any self-represented litigant to use the File & Serve system according to these rules. The Presiding Judge of the Superior Court or his/her designee, in coordination with the Clerk of Superior Court, shall review and approve the terms of the Subscriber Agreement. LexisNexis shall provide at least 30-days notice prior to the effective date of any Subscriber Agreement changes

The E-Filing Vendor may require payment of a fee or impose other reasonable requirements by contract with a subscriber as conditions for processing electronic filings. Pursuant to contract terms, the E-Filing Vendor is not permitted to require payment of a fee for government users or parties deemed indigent by the Court.

18. Registration Requirements

All participants must notify other parties, the Clerk and the E-filing Vendor immediately of any change of firm name, delivery address, fax number or e-mail address, but not later than ten (10) business days prior to when such a change takes effect. The email address of record must also be included on every document filed in the e-file case.

19. Method of Filing

Each document accepted for filing by the Clerk of Court shall be electronically file stamped with the time and date of filing, the names of the Clerk of Court and the deputy clerk accepting the filing, and the word "FILED". This file stamp shall be merged with the electronic document and shall be visible when the document is printed and viewed on-line. Electronically filed documents are not complete without the electronic filing stamp. Filings so endorsed shall have the same force and effect as documents filed in the conventional manner.

20. File Formats Accepted

The filing party may transmit a document to the E-filing Vendor in any format that vendor accepts, provided that the vendor must convert the document to a format accepted by the Clerk prior to transmission of the document to the Clerk for filing. The Clerk currently accepts PDF and TIFF file formats for any electronic filing. All file formats transmitted to the Court must be compliant with all standards set forth in sections 1-504 and 1-506 of the Arizona Code of Judicial Administration.

Scanned documents that are skewed or unreadable will not be accepted for filing and will be rejected by the Clerk as defective. The Court may require a party to produce the original of a scanned document that has been filed electronically.

21. Confirmation of Receipt and Filing or Rejection of Documents Submitted for Filing

Upon completion of the transmission of a document for filing to the E-Filing Vendor's system, the E-Filing Vendor shall return an acknowledgment of receipt of the document. After receipt of a document, the E-Filing Vendor shall immediately scan the document for viruses. If the document is free from any infection, the E-Filing Vendor shall make the document available immediately for transmission to the Clerk. If the document is infected, the E-Filing Vendor shall discard the document and transmit a notice to the e-filer that the document was infected and has not been transmitted to the Clerk.

If a document is rejected for filing, the Clerk shall promptly notify the filer that the document has been rejected and the notice shall set forth the grounds for rejection. The rejected document will not be maintained in the Clerk's electronic document management system, nor will it be docketed. It shall be the responsibility of the filing party to verify acceptance of each document and resubmit any rejected document with appropriate corrections.

22. When Filing Complete

Any document filed electronically shall be considered filed with the clerk on the date and time it is successfully received and stored to disk on the E-Filing

Vendor's system, provided that: (1) receipt of the document to the E-Filing Vendor's system is complete by 11:59 p.m. local Phoenix time on a day the Court is open for business, (2) the document is subsequently accepted by the Clerk for filing and (3) all required fees are paid.

Evidence of the date and time the document is successfully received and stored to disk shall be maintained by the E-Filing Vendor's system, and transmitted with the document submitted electronically for filing to enable the Clerk to determine the time of filing. The E-filing Vendor is required to make any electronically filed document that is not infected by a virus available for transmission to the Court immediately after successful receipt and virus checking of the document.

23. Payment of Filing Fees to E-Filing Vendor

Any document subject to this Administrative Order requiring payment of a filing fee to the Clerk of the Superior Court to achieve valid filing status shall be filed electronically in the same manner as any other document in an e-file case. Filing fees shall be tendered to the E-Filing Vendor in accordance with the terms of the Subscriber Agreement between the E-Filing Vendor and the subscriber.

The E-Filing Vendor is appointed as limited agent for the Clerk of Superior Court in Maricopa County for the collection of filing fees and all other monies payable to the Court in the course of an action. Court fees collected by the E-Filing Vendor on behalf of the Clerk shall be solely the property of the Clerk of the Superior Court in Maricopa County.

The E-Filing Vendor may require each subscriber to provide funds on account or credit card authorization to guarantee the payment of any fees, subject to such terms and conditions as may be prescribed by the E-Filing Vendor and approved by the Presiding Judge or his designee.

The Clerk of Court will be collecting the \$500.00 fee from the parties in cases designated complex prior to December 8, 2003.

24. Payment of Fees to Court by E-Filing Vendor

The E-Filing Vendor shall be liable for payment to the Clerk of the correct filing fees for any documents submitted for filing through the E-Filing Vendor's system that are accepted and filed by the Clerk of Superior Court. The E-Filing Vendor shall transmit any monies due to the Clerk of Superior Court's bank account via wire transfer in accordance with the terms of the Contract between the Court and the E-Filing Vendor. Not later than 24 hours after the transfer of funds, the E-Filing Vendor must provide the Clerk of Superior Court a detailed breakdown for each deposit, including the case number, type of transaction, parties, amount and date for each transaction. Fees charged by the E-Filing Vendor to Subscribers for access to and use of the E-File System are solely the property of

the E-Filing Vendor and are in addition to any charges associated with fees required by the Court.

25. Responsibility for Confirming Filing

A person who files a document electronically shall have the same responsibility as a person filing a document in the conventional manner for ensuring that the document is properly filed, and is complete and readable.

26. Interruption In Service

The Court and Clerk shall not be liable for malfunction or errors occurring in electronic transmission or receipt of electronically filed or served documents.

Notwithstanding any other provisions of this Administrative Order, if the electronic filing is not filed with the Clerk because of an error in the transmission of the document to the E-Filing Vendor which was unknown to the sending party, or a failure to process an electronic filing after receipt by the E-Filing Vendor, the Court may enter an order permitting the document to be filed nunc pro tunc to the date it was sent electronically.

27. E-Service

Except as herein provided, all participants shall make service upon other parties electronically through the E-Filing Vendor's system of all documents, including discovery. Participants shall receive service of all documents served upon them via access to the E-Filing Vendor's system, except as otherwise provided herein or by order of the Court.

The electronic service of a pleading or other documents through the E-Filing Vendor's system shall be considered as a valid and effective service.

28. E-Service List

The E-Filing Vendor is required to maintain an e-service list for each e-filed case. The e-service list shall be updated by the E-Filing Vendor immediately upon being given notice of a new contact information. Whenever a document is submitted for service upon other parties by the E-Filing Vendor's system, the E-filing Vendor shall use the most current e-service list to perform service.

29. When Service Is Complete

Service via the electronic filing system shall be deemed complete at the time of transmission of the document as recorded by the E-Filing Vendor's system ("authorized date") except that where completion of service is after 5:00 p.m.

Arizona (Maricopa County) time or service is recorded on a Saturday, Sunday, or legal holiday. In such case, the document shall be deemed served at 8:00 a.m. Arizona (Maricopa County) time on the next day that is not a Saturday, Sunday or legal holiday. Counsel so served has a responsibility to view the document.

30. Extension of Time

If service on a party does not occur because of: 1) inaccessibility of the E-Filing Vendor's system, 2) an error in the transmission of the document to a party, which error was unknown to the serving party or the E-Filing Vendor, 3) a failure to process the electronic document for service when received by the E-Filing Vendor, or 4) the party was erroneously excluded from the e-service list, the party to be served shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the time within which any right, duty, or other acts must be performed.

31. Availability of E-filed Documents

The E-Filing Vendor shall make electronically filed documents and documents being served electronically through the E-Filing Vendor's system available to subscribers and the Court through the E-Filing Vendor's system in accordance with the current contract between the Court and the E-Filing Vendor and this Order.

32. Court Orders and Judgments

The Court may issue, file, and serve notices, orders, and other documents electronically in an e-file case, subject to the provisions of this Administrative Order.

Where a Clerk is required to endorse a document, the typed name of the clerk shall be deemed to be the clerk's signature on an electronic document.

33. Public Access

The Clerk shall make available to members of the public, without charge and during normal business hours, at least one public access terminal capable of searching and viewing documents filed of public record in e-file cases. For the purpose of retrieving documents filed in e-file cases, access by the public shall be to the Clerk's electronic document management system, where official electronically filed documents are maintained. The Clerk shall make paper copies of any publicly filed electronic documents available at the same rate charged for copies of paper documents.

34. Amendments to Administrative Order, Code of Judicial Administration and Rules of the Arizona Supreme Court

The Superior Court in Maricopa County may amend this Administrative Order, and the Arizona Supreme Court may amend the Code of Judicial Administration and Court Rules from time to time. All parties in cases subject to this Order and the E-Filing Vendor must comply with current and future provisions of this Administrative Order, the Arizona Code of Judicial Administration and the Rules of the Arizona Supreme Court.

DATED: November 25, 2003.

Colin Campbell
Presiding Judge

Original: Clerk of Superior Court

Copies: Hon. Michael K. Jeanes, Clerk of Superior Court
Hon. Margaret Downie, Civil Presiding Judge
Hon. Kenneth Fields, Complex Civil Litigation Judge
Hon. Pendleton Gaines, Complex Civil Litigation Judge
Hon. Rebecca Albrecht, Complex Civil Litigation Judge
Marcus Reinkensmeyer, Trial Courts Administrator
Phil Knox, Deputy Court Administrator
Karen Westover, Deputy Court Administrator
Diana Clarke, Civil Department Administrator
Mark Jensen, Clerk of Superior Court's Office
John Barrett, Judicial Information Services